



Written by [Raven Clabough](#) on May 16, 2012

DHS Will Be Collecting DNA Samples, Reports EEF

It seems nothing is sacred from the federal government anymore, not even our genetic material. The Department of Homeland Security (DHS) is apparently working on a plan to collect DNA from children aged 14 and older without a search warrant or criminal prosecution. The Electronic Frontier Foundation [exposed](#) the plan after it filed a Freedom of Information Act request.



The DHS proposal comes in the wake of regulations handed down from the Department of Justice, which indicate that all federal agencies, including DHS and Immigration and Customs Enforcement (ICE), must collect DNA from individuals who are arrested for federal crimes, in addition to “non-United States persons who are detained under the authority of the United States,” regardless of whether they are actually involved in criminal activity.

By 2009, the FBI joined 15 states in taking DNA samples from individuals who were arrested, but not convicted of any crimes. The FBI database had nearly seven million DNA profiles, a figure that was expected to increase dramatically by 2012.

In 2010, Congress [began](#) to encourage states to adopt rules that require suspects of various crimes, whether they were charged with the crime or not, to submit DNA samples that would be included in a nationwide database by introducing Katie’s Law. Properly known as the Katie Sepich Enhanced DNA Collection Act of 2010, the proposed law was named for 23-year-old Katie Sepich, who was brutally murdered outside her New Mexico home in 2003. Her attacker was captured because his blood and skin were found under Katie’s fingernails. His DNA was sent to the Combined DNA Index System where a match was made to Gabriel Adrian Avila. Because of the clear evidence presented to him, Avila confessed to the murder.

On February 4, 2010, Congressman Harry Teague introduced the bill to the House, with 11 co-sponsors. Wired.com reported at the time the bill was introduced, “Sponsored by Harry Teague (D-New Mexico), the measure provides \$75 million to the nation’s financially broken states — all in a bid to coax the 11 states with such DNA-testing laws to keep them on the books, and to entice others to follow suit.”

Teague defended his bill on the House floor before the measure was passed:

The fact is that the science has advanced and we should allow law enforcement to use all the technology available to them, including the fingerprint of the 21st century, to reduce expensive and unjust false convictions, bring closure to victims by solving cold cases, better identify criminals, and [keep those who commit violent crime](#) from walking the streets.

Twenty-four states have passed Katie’s Law or similar programs.

Additionally, the federal government has introduced the [DNA Initiative](#) that provides “funding, training, and assistance to ensure that forensic DNA reaches its full potential to solve crimes, protect the innocent and identify missing persons.”

But the opposition to random DNA collection is fierce.



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The American Civil Liberties Union [brought](#) a legal challenge to a DNA collection law in California, asserting that DNA sampling differs from compulsory fingerprinting upon arrest because DNA samples reveal a person's family relationships, as well as health risks.

A three-judge panel of the Ninth Circuit Court of Appeals in San Francisco rejected the ACLU's challenge, claiming that the warrantless searches are reasonable under the Fourth Amendment. The ACLU has asked the entire Ninth Circuit to rehear the case, and the EEF is supporting the ACLU in an amicus brief of its own.

The EEF explains that its brief outlines how "suspicionless collection(s) of DNA for the sole purpose of law enforcement investigation cannot survive Fourth Amendment scrutiny."

But despite these efforts, according to congressional studies, the Supreme Court has never fully addressed the constitutionality of DNA laws.

In 2011, however, the Third Circuit ruled in *United States v. Mitchell* that arbitrary collection of DNA from those who have not been convicted of a crime does represent a direct violation of the Fourth Amendment.

"Note that this has to do with testing in the absence of probable cause (or even a reasonable suspicion) that the DNA would be evidence related to a crime," writes [Eugene Volokh](#).

Jennifer Lynch of the EEF comments, "Collecting DNA from anyone detained by the government for any number of non-criminal reasons — especially juveniles — seems to be yet another step on the slippery slope to collecting DNA from everyone in the United States, no matter their status."

According to DHS estimates, as many as one million people who are detained or arrested annual could now be subjected to DNA collection.

Meanwhile, defense contractors Lockheed Martin and Northrop Grumman have already developed a DNA analysis platform that they are expected to release this summer.

Fox News [reports](#), "A portable, breadbox-sized scanner could map out your body's DNA in less than an hour — and the Feds want it added to the agency's tool bag."

Sources at DHS assure FoxNews.com that evaluation of the DNA-screening technology will occur only after the department sets privacy and civil liberties safeguards — a vitally important step to protect such highly personal information, insisted John Verdi, senior counsel at the [Electronic Privacy Information Center](#).

"If it were used for routine criminal investigations, it would raise the specter of a national DNA database," Verdi told FoxNews.com. "There are a lot of legal and constitutional hurdles that would have to be overcome for it to be lawfully used."

One such hurdle includes how the DHS would dispose of the information once it has fulfilled its purpose, notes Verdi.

Verdi contends that the DHS must meet the federal requirements for the protection of personally identifiable information as set forward by the Privacy Act of 1974.

"Those requirements and obligations have to be observed. The department would be well advised to vet this technology through its privacy committees and its internal privacy apparatus," Verdi stated, "but in addition, there needs to be independent oversight of a program like this. There needs to be oversight by lawmakers and oversight by citizens who are experts in these areas of technology, health records, and



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security to ensure the agency is not collecting data, retaining data, or sharing data contrary to law and regulation.”

The Electronic Frontier Foundation contends that permitting the DHS to collect DNA samples its an incredibly slippery slope:

The [DOJ argues](#) that collecting DNA from all people arrested and non-US persons detained will allow it to find and identify more criminals, solve more crimes, and “prevent and deter subsequent criminal conduct.” but it is hard to see how that argument couldn’t be extended to apply with equal force to mandated DNA collection from everyone.

The policy of collecting DNA from mere suspects is increasingly frightening when one considers it in conjunction with the spying efforts of the National Security Administration and other agencies to track and trace Americans, as well as laws such as the National Defense Authorization Act 2012 and the Patriot Act.



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